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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/017,810	10/30/2001	Frank Reidy	89751.139601	9158	
7590	12/08/2003	EXAMINER			
GREEN, BRIAN					
JAECKLE FLEISCHMANN & MUGEL, LLP 39 State Street Rochester, NY 14614-1310		ART UNIT		PAPER NUMBER	
		3611			

DATE MAILED: 12/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)
	10/017,810	REIDY, FRANK
	Examiner Brian K. Green	Art Unit 3611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 22 September 2003.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-10 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-10 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Drawings

The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 9/22/03 have been disapproved since the separated parts should be embraced by a bracket.

The drawings are objected to because the drawings fail to show numeral "40" as disclosed in the specification on page 4. The applicant added the reference to numeral 40 in the amendment filed 3/31/03. A proposed drawing correction or corrected drawings are required in reply to the Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 5-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Isreeli (U.S. Patent No. 3,350,946).

Isreeli shows in figures 1-5 an identification tag having a one-piece rigid body (14) having an outer wall of varying height (the curved back surface of Isreeli creates the varying height of the wall in the same manner as the applicant's curved surface creates the varying height wall) around the entire perimeter of the tag. Isreeli disclose in the specification, column 2, lines 16-18 the idea of using an adhesive to bond the tag to an article (12). Isreeli discloses the use of raised indicia (the projections adjacent the recesses 34, see column 2, 30-35).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,2, and 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boire et al. (U.S. 2002/0032102) in view of Isreeli (U.S. Patent No. 3,350,946).

Boire et al. shows in figures 1-3 an identification tag having a one-piece rigid body having an outer wall and raised indicia (see the abstract). Boire disclose in the abstract and on page 3, lines 11-15 the idea of using an adhesive to bond the tag to a pipe. In regard to claim 2, Boire discloses on page 3, lines 29-40 the idea of making the tag from a PVC material. Boire et al. does not disclose making the outer wall of varying height around the entire side perimeter of the tag. Isreeli shows in figures 1 and 5 the idea of making a tag (14) having a one-piece rigid body that includes an outer wall of varying height (the curved back surface makes the side perimeter of varying height) around the entire side perimeter of the tag. The rigid body is adhesively attached to the article (12). In view of the teachings of Isreeli it would have been obvious to one in the art to modify Boire et al. by making the outer wall of the tag of varying height since this would allow the tag to be made in an easier and faster manner and would reduce the amount of material required to form the tag which would reduce the cost of making the tag.

Claims 3,4,9, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boire et al. (US 2002/0032102) in view of Isreeli as applied to claims 1 and 5 above, and further in view of the applicant's admitted prior art on page 6, lines 12-13.

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In regard to claims 3 and 9, Boire et al. in view of Isreeli does not disclose whether the adhesive used is a PVC cement. The applicant discloses on page 6, lines 12-13 in the specification that the use of PVC cement is known. In view of the applicant's prior art disclosure it would have been obvious to one in the art to modify Boire et al. by making the adhesive in the form of a PVC cement since this would allow the tag to be attached to the pipe in a more secure manner. In regard to claims 4 and 10, Boire et al. in view of Isreeli does not disclose whether a PVC cleaning agent is used. The applicant discloses on page 6, lines 12-13 in the specification that the use of PVC cleaning agent is known. In view of the applicant's prior art disclosure it would have been obvious to one in the art to modify Boire et al. by using a PVC cleaning agent since this would allow the tag to be attached to the pipe in a more secure manner.

Claims 2 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Isreeli (U.S. Patent No. 3,350,946) in view of Williamson (U.S. Patent No. 4,196,424).

Isreeli discloses the applicant's basic inventive concept except for making the tag from polyvinyl chloride. Williamson discloses in column 4, lines 55-57 the idea of making a tag from PVC. In view of the teachings of Williamson it would have been obvious to one in the art to modify Isreeli by making the tag from polyvinyl chloride since this would make the tag tougher and more durable.

Claims 3,4,9, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Isreeli (US Patent No. 3,350,946 in view of the applicant's admitted prior art on page 6, lines 12-13.

In regard to claims 3 and 9, Isreeli does not disclose whether the adhesive used is a PVC cement. The applicant discloses on page 6, lines 12-13 in the specification that the use of PVC cement is known. In view of the applicant's prior art disclosure it would have been obvious to one in the art to modify Boire et al. by making the adhesive in the form of a PVC cement since this would allow the tag to be made from PVC and attached to articles made from PVC in a more secure manner. In regard to claims 4 and 10, Isreeli does not disclose whether a PVC cleaning agent is used. The applicant discloses on page 6, lines 12-13 in the specification that the use of PVC cleaning agent is known. In view of the applicant's prior art disclosure it would have been obvious to one in the art to modify Isreeli by using a PVC cleaning agent since this would allow the tag to be made from PVC and attached to articles made from PVC in a more secure manner.

Response to Arguments

The applicant argues that Isreeli fails to disclose a "one-piece rigid substrate body". The examiner disagrees since Isreeli shows in figures 1-5 a one-piece rigid substrate body (14). The applicant does not state in the claims that the tag "consists" of a one-piece rigid substrate body. Rather, the claims simply require that a portion of the tag include a one-piece body. As defined in the claims, the tag can include more than a one-piece body.

The applicant argues that Isreeli does not disclose indicia for identifying the pipe located on an upper flat surface. The examiner disagrees since Isreeli shows in figures 1 and 5 that the one-piece rigid body includes an upper flat surface which receives member (16) having raised indicia (the projections adjacent to the recesses 34).

The applicant argues that the indicia of Isreeli is recessed rather than raised. The examiner disagrees since the indicia is considered to be the projections located adjacent to the recesses (34). The projections are raised relative to the recessed areas.

The applicant argues that the outer wall of Isreeli is not of a varying height around the entire perimeter of the tag. The examiner disagrees since Isreeli shows in figures 1 and 5 that the one-piece rigid body (14) includes a wall having a varying height because of the curved back surface on the body. The one-piece rigid body is considered to form the entire side perimeter of the tag. The member (16) is not considered to form part of the side perimeter of the tag.

The applicant argues that the combination of Boire et al. in view of Isreeli does not disclose the limitation of an outer wall of varying height around the entire side perimeter of the tag as defined in claims 1 and 5. The applicant argues that the outer wall of Isreeli is not of a varying height around the entire perimeter of the tag because the card member 16 extends beyond the sidewall of the rigid body 14. The examiner disagrees since when the one-piece rigid body (14) replaces the attachment used by Boire et al. the card member 16 would not be used. The sign plate (15) of Boire et al. would simply be made in the form of the one-piece rigid body taught by Isreeli with the curved lower surface for receiving the article upon which it is to be attached. The upper flat surface of the plate (15) would include the indicia and the height of the outer wall would vary over the entire perimeter of the tag.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian K. Green whose telephone number is (703) 308-1011. The examiner can normally be reached on M-F 7am-3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (703) 308-0629. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-4177.


BRIAN K. GREEN
PRIMARY EXAMINER

Bkg
Dec. 5, 2003